

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

ALORICA, INC. AND ITS SUBSIDIARY/AFFILIATE)		
EXPERT GLOBAL SOLUTIONS, INC.,)		CASE NO. 18-CA-190846
AND)		
OPEIU, LOCAL 153, OFFICE & PROFESSIONAL)		
EMPLOYEES INTERNATIONAL)		
UNION, AFL-CIO)		

ALORICA, INC. AND ITS SUBSIDIARY/AFFILIATE)		
EXPERT GLOBAL SOLUTIONS, INC.,)		CASE NOS. 25-CA-185622
AND)		and 25-CA-185626
SETH GOLDSTEIN AND)		
OFFICE & PROFESSIONAL EMPLOYEES)		
INTERNATIONAL UNION, LOCAL 153)		

RESPONDENT ALORICA, INC. AND ITS SUBSIDIARY/AFFILIATE
EXPERT GLOBAL SOLUTIONS, INC.’S RESPONSE TO THE CROSS-EXCEPTIONS
FILED ON BEHALF OF COUNSEL FOR THE GENERAL COUNSEL

Counsel for the General Counsel’s cross-exceptions to the Decision of the Administrative Law Judge (“ALJ”) based on the ALJ’s failure to rule on the Complaints’ requests for consequential damages should be denied.

The arguments to extend remedial awards under the Act emanates from an initiative espoused by former General Counsel Richard Griffin, but this initiative has not been approved by the Board. Indeed, by its terms, the proposed enforcement policy refers to its application to “discriminatees” in Section 8(a)(3) cases without any indication that it would be applicable to employees displaced based on an employer’s enforcement of an alleged unlawful work rule in violation of Section 8(a)(1). Moreover, current General Counsel Peter Robb, in GC Memo 18-02

(December 1, 2017) identified consequential remedies among the significant legal issues that should be submitted to Advice to determine whether the General Counsel might want to provide a different analysis to the Board. GC Memo 18-02 *citing King Soopers*, 364 NLRB No. 93 (2016); *Alamo Rent-a-Car*, 362 NLRB No. 135 (2016). The General Counsel's request for consequential damages in this case should be rejected.

The application of a policy to secure consequential damages raises significant statutory infirmities since Section 10(c) of the Act limits the Board's remedial powers to "an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the purpose of the Act" 29 U.S.C. §160(c). To order relief beyond that specifically authorized by the Act or by court-approved precedent effectively would result in an *ex post facto* law and the denial of constitutional substantive due process in violation of Article 1, Section 9 and/or the Fifth Amendment of the United State Constitution. In fact, the term "consequential damages" is so vague that it would open the door for recovery of a myriad of purported damages only tangentially related to the alleged violation of the Act. An aggrieved former employee's damages from the loss of a job logically are limited to the employee's loss of wages and benefits the employee would have earned but for the unlawful separation from employment, and should not include any other loss by the former employee. Such alleged "consequential" losses are either attributable to financial relationships or obligations the employee had unrelated to his or her employment, or are merely speculative in nature.

The remedies under the Act have been constant for 82 years of enforcement and have not included consequential damages. Simply stated, a broad and general claim for consequential damages, to be determined at some later date by a separate compliance proceeding, denies the

Respondent fair notice and opportunity to defend itself. Further, the absence of consequential damages from the remedial language in the Act supports the historic consistency of Board's remedial orders.

For these reasons, Respondent respectfully requests that the Board deny the Cross-Exceptions of Counsel for the General Counsel.

DATED this 13th day of December, 2017.

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

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CERTIFICATE OF SERVICE

I certify that on December 13, 2017, a copy of the foregoing ***RESPONDENT ALORICA INC. AND ITS SUBSIDIARY/AFFILIATE EXPERT GLOBAL SOLUTIONS, INC.'S RESPONSE TO THE CROSS-EXCEPTIONS ON BEHALF OF COUNSEL FOR THE GENERAL COUNSEL*** was Electronically Filed as a .pdf document via the NLRB's e-filing system and transmitted via e-mail and Federal Express to the following parties:

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